

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK

FELIX DeJESUS,

Plaintiff,

-against-

9:04-CV-1038  
(LEK/GJD)

S. MILLER DOE, *et al.*,

Defendant.

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**DECISION AND ORDER**

This matter comes before the Court following a Report-Recommendation filed on August 28, 2006, by the Honorable Gustave J. DiBianco, United States Magistrate Judge, pursuant to 28 U.S.C. § 636(b) and L.R. 72.3(c) of the Northern District of New York. Report-Rec. (Dkt. No. 43).

Within ten days, excluding weekends and holidays, after a party has been served with a copy of a Magistrate Judge's Report-Recommendation, the party "may serve and file specific, written objections to the proposed findings and recommendations," Fed. R. Civ. P. 72(b), in compliance with L.R. 72.1. In the interval of at least fifteen days since the Magistrate Judge filed the subject Report-Recommendation, no objections to it have been raised. Furthermore, after examining the record, the Court has determined that the Report-Recommendation is not subject to attack for plain error or manifest injustice.<sup>1</sup>

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<sup>1</sup> The Court notes two errors, which do not materially affect the Report-Recommendation. First, the Report-Recommendation states correctly that the alleged incidents occurred between June 9, 2000 and October 2, 2000, but then the Report-Recommendation incorrectly states July 9, 2000 as the earlier date upon which Plaintiff was aware of alleged violations. See Report-Rec. (Dkt. No. 43) at 6. June 9, 2000 is the correct date. See Amended Complaint (Dkt. No. 5); Report-Rec. (Dkt. No. 43) at 6. Second, Plaintiff's Motion to Appoint Counsel is Docket Number 39, not Docket Number 30. See Report-Rec. (Dkt. No. 43) at 8.

Accordingly, it is hereby

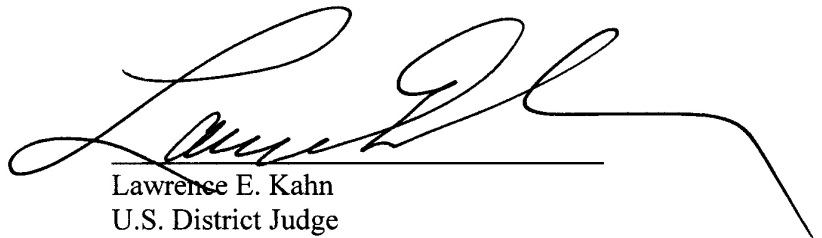
**ORDERED**, that the Report-Recommendation (Dkt. No. 43) is **APPROVED** and **ADOPTED** in its **ENTIRETY**; and it is further

**ORDERED**, that Defendants' Motion to dismiss (Dkt. No. 36) is **GRANTED**, and Plaintiff's Complaint is **DISMISSED IN ITS ENTIRETY WITHOUT PREJUDICE** as stated in Judge DiBianco's Report-Recommendation; and it is further

**ORDERED**, that the Clerk serve a copy of this Order on all parties.

**IT IS SO ORDERED.**

DATED: September 26, 2006  
Albany, New York



Lawrence E. Kahn  
U.S. District Judge